IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 2 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF STATE DUTY

Versus

LATE RADHABHAI GOVIND JUVEKAR

Appearance:

1. ESTATE DUTY REFERENCE No. 2 of 1987
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for the opinion of this Court under Section 64 of the Estate Duty Tax Act, 1953 :-

"Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that while valuing the life interest of deceased, Rule 1B of W.T. Rules and not section 40 of the Estate Duty Act should be applied ?"

2. The reference in made in the case of Smt. Radhabai, widow of Shri Govind Juvekar who died on 18.9.1977. In the estate duty proceedings upon her death, the question of valuation of life interest of the deceased in the trust properties arose for consideration. The Assistant Valuation Officer valued such interest under Section 7 read with Section 40 of the Estate Duty Act by adopting the interest capitalization method, taking into consideration the average income derived on the receipts during the least five years. Capitalizing the average income of Rs.21,458/- at 8% interest, the value of the deceased's interest in the estate passing on the death of the deceased was worked out to Rs.2,68,225/and the same was added to the principal value of the total estate of the deceased. The CED(A) noted that the ACED has taken the average income and had capitalized the same at the rate of 8%. According to the CED(A) such capitalization would be permissible when the beneficiaries interest in the property was not restricted to life interest i.e. when there were no reminder-men other than the beneficiary concerned. The CED(A) was of the opinion that that aspect of the point had escaped the attention of the ACED. In the opinion of the CED(A), a well recognized formula for valuation of life interest was given in Rule 1B of W.T. Rules, 1958. The CED(A) was, therefore, of the opinion that it would be reasonable to adopt the same formula in the facts and circumstances of the present case. Proceeding on these lines, the CED(A) noted that deceased Smt. Radhabai had expired on 18.9.1977 at the age of about 70 years and also about one year after the execution of the will and codicil dated 25.4.1976. The CED(A) was of the opinion that for a person of 70 years of age, the multiplying factor as per the Table given in the Appendix in the context of Rule 1B of W.T. Rules would be 4.380. The CED(A) therefore applied that multiplying factor of 4.380 to the valuation of the life interest of the deceased in the estate. The department felt aggrieved and took the matter in appeal to the Tribunal. The Tribunal relied on the judgment of the Mysore High Court in CED vs. Krishna

Murthy, (1974) 96 ITR 87 laying down that for the purpose of valuation of life interest, the provisions of rules under the Wealth Tax Act were in pari materia with the provisions of the Estate Duty Act. On that basis, the Tribunal confirmed the order of the CED(A) applying Rule 1B of the Rules under the Wealth Tax Act for valuing the interest of the deceased. Hence, this reference at the instance of the revenue.

3. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-accountable person.

4. Having perused the decision of the Mysore High Court in CED vs. Krishna Murthy, (1974) 96 ITR 87 relied upon by the Tribunal and having heard the learned counsel for the revenue, we are in agreement with the view of the Mysore High Court. Since no rules were framed under the Estate Duty Act for valuing such interest, we see no reason why the valuation method prescribed by Rule 1B of the Rules under the Wealth Tax Act should not be adopted. We are of the view that the Tribunal was right in holding that while valuing the life interest of the deceased, Rule 1B of the Wealth Tax Rules and not Section 40 of the Estate Duty Act would apply. We accordingly answer the question in the affirmative i.e. in favour of the accountable person and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-